



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200940034

Uniform Issue List: 408.03-00

JUL 9 2009

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Legend:

Taxpayer A:

Month One:

Month Four:

Month Eight:

IRA X:

Roth IRA Y:

Date One:

Date Two:

Date Three:

Date Four:

Date Five:

Amount L:

Amount M:

Amount N:

Amount R:

Financial Institution W:

Financial Advisor B:

Dear :

This is in response to your letters dated December 16, 2008, February 25, 2009, March 6, 2009, and June 17, 2009 submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("the Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A maintained an Individual Retirement Account (IRA), IRA X, with Financial Institution W. Taxpayer A, age 67, asserts that during Month One, Taxpayer A received a distribution of Amount M from IRA X and that his failure to accomplish a rollover of Amount M within the 60 day period prescribed by section 408(d)(3) of the Code was due to Financial Institution W error in failing to follow Taxpayer A's instructions.

During Month One Taxpayer A met with his Financial Advisor B, a representative of Financial Institution W, to discuss Taxpayer A's wish to perform a Roth conversion of the entire balance of IRA X, within the meaning of Code section 408A(d)(6) and section 1.408A-5 of the federal Income Tax Regulations (the "I.T. Regulations"). Financial Advisor B has been Taxpayer A's financial advisor for over 20 years and Taxpayer A has represented that he relied on Financial Advisor B's expertise in financial matters.

Financial Advisor B completed an initial distribution request form for Taxpayer A's signature to accomplish the conversion. The form was signed by Taxpayer A on Date One but the form inadvertently omitted the account number. Subsequently, during Month One, Financial Advisor B completed a second distribution request form for Taxpayer A's signature. This form included the account number but erroneously provided for a 35 percent federal income tax withholding which had not been provided for on the original distribution form and which Taxpayer had not requested. Taxpayer A, assuming the second form was identical to the initial distribution form except for the account number, did not notice the withholding provision, promptly signed the corrected form on Date Two, and returned it to Financial Advisor B.

Late in Month One Financial Institution W converted Amount L representing the total balance of IRA X, Amount N minus Amount M (the federal withholding amount) to a Roth IRA, Roth IRA Y.

During Month Four, Taxpayer A first realized that Financial Institution W had withheld Amount M at the time of his IRA X to Roth Y conversion when he received a form 1099-R indicating the withholding.

It was subsequently determined that Taxpayer A exceeded the income limit of Code section 408A(c)(3)(B) which provides that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) in excess of \$100,000 for a taxable year is not permitted to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during that taxable year. Accordingly, on Date Three, Taxpayer A signed an IRA Recharacterization Request to recharacterize his Roth IRA Y in accordance with section 1.408A-5 of the I.T. Regulations, back to a traditional IRA. Amount R (Amount L minus investment losses) has been held in traditional IRAs since Date Three.

Early in Month Eight, Taxpayer A received a refund from the Internal Revenue Service of Amount M (the federal withholding amount). On Date Four, Taxpayer A attempted to complete a rollover of the Amount M refund check; however, Financial institution W informed Taxpayer A that a rollover was not possible because the 60-day rollover period had expired.

On Date Five, Taxpayer A received a letter from Financial Institution W, in which, Financial institution W admitted that the checking of the "Withhold taxes" box on the second form sent to Taxpayer A and the subsequent withholding of Amount M was done in error and without notice to Taxpayer A.

Taxpayer A has not used Amount M for any other purpose.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount M contained in section 408(d)(3) of the Code ("the Code").

With respect to your ruling requests, Code section 408A(d)(6) and section 1.408A-5 of the I.T. Regulations provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having originally been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. Under section 408A(d)(6) and section 1.408A-5, this recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's federal income tax returns for the year of contributions.

Code section 408A(c)(3)(B) provides that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) in excess of \$100,000 for a taxable year is not permitted to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during that taxable year.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that during Month One, Taxpayer A received a distribution of Amount M from IRA X and that his failure to accomplish a rollover of Amount M within the 60 day period prescribed by section 408(d)(3) of the Code was due to Financial Institution W error in failing to follow Taxpayer A's instructions.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount M from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount M to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to code section 408(d)(3)(E), this ruling letter does not authorize the rollover of the Code section 401(a)(9) minimum required distributions.

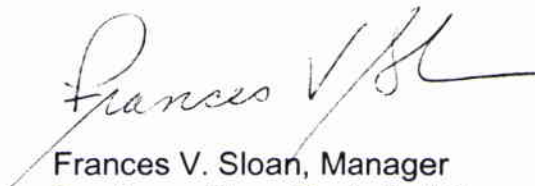
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling is sent to your authorized representative pursuant to the provisions of a Power of Attorney on file in this office.

If you have any questions, please contact

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frances V. Sloan", followed by a long horizontal flourish.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose